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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,569	04/09/2004	Richard Spady	DICK-1-1001	3222
25315	7590	09/30/2008		
BLACK LOWE & GRAHAM, PLLC			EXAMINER	
701 FIFTH AVENUE			STERRETT, JONATHAN G	
SUITE 4800			ART UNIT	PAPER NUMBER
SEATTLE, WA 98104			3623	
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		09/30/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,569	<b>Applicant(s)</b> SPADY, RICHARD
	<b>Examiner</b> JONATHAN G. STERRETT	<b>Art Unit</b> 3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 July 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 3-16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Summary***

1. This **Final Rejection** is responsive to 1 July 2008. Currently **Claims 3-16** are pending in the application. The examiner withdraws the previously given 112 and 101 rejections, however the addition of new claims merits new grounds of rejection given below.

### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Examiner requests copies of all of the references cited in the Specification including at least: Spady et al., The Leadership of Civilization Building (Paragraph 002), Likert, Rensis, The Human Organization (Paragraph 0049), The Leadership of Civilization Theory (Paragraph 0083), Hawking, Stephen, A Brief History of Time (Paragraph 0090), Liderbach, Daniel, The Numious Universe (Paragraph 0092), Nichol, Lee, On Dialogue (Paragraph 0103), Spady et al., The Search for Enlightened Leadership Vol. 1 and Vol. 2 (Paragraph 0127) and Wells, H.G., Reach Out Their Hands Amidst the Stars (Paragraph 0134).

***Specification***

3. The attempt to incorporate subject matter into this application by reference to Spady et al., The Leadership of Civilization Building (Paragraphs 002, 0146) is ineffective because a an the reference was not cited in an Information Disclosure Sheet nor was of the non-patent literature provided.

The incorporation by reference will not be effective until correction is made to comply with 37 CFR 1.57(b), (c), or (d). If the incorporated material is relied upon to meet any outstanding objection, rejection, or other requirement imposed by the Office, the correction must be made within any time period set by the Office for responding to the objection, rejection, or other requirement for the incorporation to be effective. Compliance will not be held in abeyance with respect to responding to the objection, rejection, or other requirement for the incorporation to be effective. In no case may the correction be made later than the close of prosecution as defined in 37 CFR 1.114(b), or abandonment of the application, whichever occurs earlier.

Any correction inserting material by amendment that was previously incorporated by reference must be accompanied by a statement that the material being inserted is the material incorporated by reference and the amendment contains no new matter. 37 CFR 1.57(f).

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4. The use of the trademarks PC Rating and CPC Rating has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 3-9** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Claim 3** is rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. Thus, **Claim 3** is non-statutory since it may be performed within the human mind. **Claims 4-9** depend on **Claim 3** and are not statutory at least for the reasons given above for **Claim 3**.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. **Claims 3-16** are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention.

The public use or sale of the invention, a method for presenting new social indicators, sold by the Applicant under one or more of the following product/service names: Opinionnaire, Viewspaper, Fast Forum, Polarization-Consensus Rating (PC Rating), Converted Polarization-Consensus Rating or Modified Polarization-Consensus Rating (CPC Rating), is evidenced by at least the Applicant's disclosure (Paragraphs 0010-0011, 0013, 0048) and Spady et al., A New View of Authority and The Administrative Process (1995; Paragraph 3, Page 10; Paragraphs 4-6, Page 11; Paragraphs 1, 3-5, Page 12; Paragraphs 1-5, Page 14).

An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: please provide the names of any products or services that have incorporated the claimed subject matter as well as information regarding their public use and/or sale (e.g. product road maps, sales presentations, investor disclosures, case studies, product manuals, product brochures, etc.), and provide a citation and a copy of each publication which any of the applicants authored or co-authored and which describe the disclosed subject matter and/or products or services.

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Kelly, Thomas, U.S. Patent No. 5,913,204, teaches a system and method for conducting one or more opinion surveys wherein the method analyzes and presents one or more measures/values related to the survey results.

- Forman, Ernest, U.S. Patent No. 6,067,719, teaches the well known conducting and analysis of opinion polls utilizing scaled questions (Likert scale, ordinal scale, etc.) wherein summaries of the polls are frequently provided.

- West et al., U.S. Patent No. 6,175,833, teaches an online interactive opinion polling system and method wherein the system provides juxtaposed percentages representing either the polarization or consensus of the online poll.

- Fuerst, Carol, U.S. Patent No. 6,189,029, teaches a online survey (questionnaire, poll, etc.) system and method wherein the system conducts, analyzes and presents the survey results.

- Jacobson, David Mitchell, Social Projection-Based Opinion Polarization Among Seventh and Eighth Grade Students (1983) teaches a method for determining the opinion polarization for Likert-type surveys/questionnaires.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS 9-24-2008

/Jonathan G. Sterrett/

Primary Examiner, Art Unit 3623

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